



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

AUG 01 2012

REPLY TO THE ATTENTION OF:

WW-16J

Warren Swartz, Tribal President  
Keweenaw Bay Indian Community  
16429 Beartown Road  
Barago, Michigan 49908

RE: Invitation to Consult on the U.S. Environmental Protection Agency's Decision to Either Reaffirm, Modify or Withdraw the Agency's Objection to a Proposed State Permit to Fill Wetlands for the Construction of Marquette County Road 595

Dear President Swartz:

The U.S. Environmental Protection Agency is initiating consultation with federally recognized Indian tribes in the Upper Peninsula of Michigan, on EPA's decision to either reaffirm, modify, or withdraw our objection to the issuance of a wetland fill permit by the Michigan Department of Environmental Quality (MDEQ) for construction of County Road 595. This consultation process will be conducted in accordance with the *EPA Policy on Consultation and Coordination with Indian Tribes* (<http://www.epa.gov/tribal/consultation/consult-policy.htm>). EPA invites you and your designated consultation representative to participate in this process. EPA's anticipated timeline for the consultation period is expected to extend from the date of this letter to **September 17, 2012**. Please respond to this letter, within 20 days from the receipt of this letter with your preference for mode of consultation and with the contact information for your consultation representative. Possible options for consultation include a conference call or meeting with EPA representatives in Marquette, Michigan either before or after the public hearing EPA will be holding in Marquette, on August 28, 2012.

#### Background

The MDEQ is considering issuing a wetland fill permit for construction of Country Road 595 under Sections 301 and 303 of the Michigan Natural Resources and Environmental Protection Act and Section 404 of the Clean Water Act (CWA). The proposal submitted by the Marquette County Road Commission is for the construction of a new 21.4 mile primary county road that will run north-south connecting U.S. Highway 41 and County Road Triple A, through Champion, Ely, Humboldt and Michigamme Townships (see enclosed fact sheet). The proposed road would impact 25.8 acres of high quality wetlands and require 22 stream crossings.

Based on information available in April 2012, EPA determined that the Marquette County Road Commission failed to demonstrate that there were no practicable alternative routes available which would impact fewer aquatic resources. EPA also found that the construction of the road would result in significant degradation of aquatic resources within, and adjacent to, the road.

corridor. The Road Commission's proposal to mitigate the damage to wetlands and streams was found to not fully compensate for the adverse impacts to aquatic resources. As a result EPA determined that the proposed project did not comply with the CWA Section 404(b)(1) Guidelines, which are set out in the Code of Federal Regulations at 40 C.F.R. Part 230, and objected to the issuance of a wetland fill permit by the MDEQ for the road.

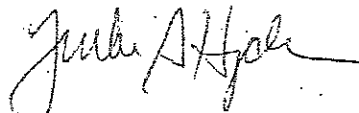
Since our April 23, 2012 objection, the Marquette County Road Commission has provided additional information to their application intended to address EPA's concerns. EPA now must decide whether to reaffirm, modify or withdraw our objection. If EPA's objection is maintained, the MDEQ would have to issue a permit that satisfies the objection or the Marquette County Road Commission would have to apply for a CWA Section 404 permit from the Detroit District, Army Corps of Engineers. EPA would like to consult with you about our final decision on this permit action. We would like your input regarding how this decision may affect tribal interests.

The official EPA contact person for this consultation and coordination process is Melanie Haveman. Ms. Haveman is the point of contact for technical matters relating to this decision. She will also work with your staff to make logistical arrangements for the consultation. If the Tribe does not feel that it is necessary to consult, please inform Ms. Haveman. She can be reached at 312-886-2255 or at [haveman.melanie@epa.gov](mailto:haveman.melanie@epa.gov).

Please be advised that pursuant to the regulations found at 40 C.F.R. § 233.50, the MDEQ has requested EPA to hold a public hearing on EPA's decision to either reaffirm, modify or withdraw our objection to MDEQ's issuance of a permit for the road project. The public hearing is scheduled for August 28, 2012 at Northern Michigan University in Marquette Michigan (information on the hearing is enclosed). The public hearing will provide members of the public an opportunity to submit comments to EPA for the record. I want to make sure that you are aware that your tribe is welcome to participate in both the public hearing and the consultation process.

I look forward to hearing from you on this matter.

Sincerely,



Tinka G. Hyde  
Director, Water Division

Enclosure

cc: Char Spruce, Keweenaw Bay Indian Community  
Bill Creal, MDEQ  
Darren Voght, 1854 Treaty Authority  
Jane TenEyck, Chippewa Ottawa Resource Authority  
James Zorn, Great Lakes Indian Fish and Wildlife Commission